

CITY OF FRISCO

ADMINISTRATIVE DIRECTIVES

SECTION: Human Resources

REFERENCE NUMBER: 1.9.1

CATEGORY: Standards of Conduct

EFFECTIVE DATE: 01/15/94

TOPIC: Non-D.O.T. Drug and Alcohol Testing Directive

APPROVED BY: Ginger Purdy

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STATEMENT OF PURPOSE:

Employees are the City of Frisco's most valuable resource; therefore the employees' health and safety are of utmost concern. The City also recognizes that drug and alcohol abuse give rise to accidents, decreased productivity and increased medical expenditures. In recognition of the nationwide drug and alcohol abuse problem, as well as indications of such problems in the City's work force, the City prohibits the use of controlled substances or alcohol on City facilities, or arriving for work impaired by or under the influence of a controlled substance or alcohol and the other acts as outlined in this directive.

Drug and/or alcohol testing will be conducted prior to employment and during employment for reasonable suspicion and after motor vehicle accidents. The purpose for drug and alcohol testing is to promote a **DRUG-FREE WORK ENVIRONMENT** and to protect the employee who might be impaired by the use of a controlled substance, his or her fellow employees, and the general public from harm or injury.

SCOPE:

- 1.9.1.01 This policy applies to all City of Frisco departments, all employees and pre-employment finalists. This policy may be superseded by Administrative Directive 1.9.2. (Department of Transportation Controlled Substance Abuse and Alcohol Misuse Policy) for employees in safety-sensitive positions, as defined by the U.S. Department of Transportation Act of 1991.

COORDINATION OF THIS DIRECTIVE WITH ADMINISTRATIVE DIRECTIVE 1.9.2 (D.O.T. Controlled Substance and Alcohol Misuse Directive):

When implementing either this directive or Administrative Directive 1.9.2 a determination will first be made as to whether the Department of Transportation regulations apply to the employee and the situation. If the D.O.T. regulations do apply, then Administrative Directive 1.9.2 takes

precedence over this policy and the procedures within that policy (AD1.9.2) will be utilized. In those cases where the D.O.T. regulations do not apply, the policies and procedures outlined in this directive will apply for all employees.

DEFINITIONS:

- 1.9.1.02 "Alcohol" is defined as ethyl alcohol. Alcohol, as used herein, includes any beverage, mixture or preparation containing ethyl alcohol.
- .03 "Controlled substance" means a drug or substance listed in the Texas Controlled Substance Act, the Federal Controlled Substance Act and includes, but is not limited to inhalants, marijuana, cocaine, narcotics, opiates, opium derivatives, hallucinogens and any other substance having either a stimulant or depressant effect on the central nervous system such as amphetamines or barbiturates. All references to "drugs" throughout this policy means the same as "controlled substance".
- .04 "Impaired" means an employee's diminished capacity to perform any duties of the employee's job.
- .05 "Under the influence" means the condition existing after the voluntary introduction of any amount of controlled substance into the employee's body or alcohol at/or above the limit of 0.04 as set by the U.S. Department of Transportation in the Omnibus Transportation Employee Testing Act of 1991.
- .06 "Motor vehicle accident" is defined as any incident involving motor driven equipment in which there is injury to a person or damage to a city vehicle, other vehicle, or property and includes:
- A. An accident in which a City employee was driving their personal vehicle in the course and scope of their employment.
 - B. Any accident involving a City vehicle.

Within this definition, the following circumstances WILL REQUIRE DRUG TESTING:

1. Any accident involving a City vehicle and a non-city vehicle or where a person has been injured as a result of the accident.
2. Any accident involving a City vehicle where damage occurs to a City vehicle or any property that is greater than \$500, as determined by the Department Director.

Within this definition, the following circumstances will be considered an exception and drug and/or alcohol testing will **NOT** occur in these instances unless there is other evidence to give reasonable suspicion:

1. When excavating and underground pipes, cables or other underground utility facilities are hit.
2. When a vehicle is damaged by flying debris (i.e. rocks, foreign objects, etc.) from a mower or other equipment.
3. When a vehicle is lawfully parked and is hit by another vehicle.
4. Damage to personal vehicles while conducting personal business (i.e. traveling to and from work or during meal breaks, where no business is conducted).
5. NOTE: While during the course and scope of employment, a Police Officer who transports alcohol or controlled substances and/or who engages in the under cover selling of alcohol or controlled substances, will not be considered to have violated this directive.

.07 "Reasonable Suspicion" is defined as a conclusion by any person of an employee's conduct, subject to corroboration and documented in writing, that would lead a reasonably prudent person to suspect that an employee is under the influence of drugs and/or alcohol (see definition of "under the influence" 1.9.1.05). A conclusion can be based on personal observation and/or information received from third parties. Such indications may include, but are not limited to, a drop in the employee's performance level, impaired judgment or reasoning, decreased level of attention, or behavioral change.

A. Characteristics indicating reasonable suspicion may include, but are not limited to:

1. A pattern of abnormal or erratic behavior
2. Physical symptoms such as glassy or bloodshot eyes, slurred speech, unsteady gait, poor coordination or reflexes
3. Odor of alcoholic beverages or marijuana
4. Unexcused absenteeism or tardiness to work or from breaks
5. Excessive on-the-job accidents (rule of thumb; 2 or more in a 3 month period but must still be cleared by City Manager or Director of Human Resources)
6. Direct observation of drug or alcohol use or possession.

- B. Information provided by a reliable and credible source or possession of drugs or alcohol will constitute a basis for reasonable suspicion.

ADMINISTRATIVE DIRECTIVES:

- 1.9.1.08 The following acts are prohibited. Committing any such act constitutes serious misconduct not warranting any previous disciplinary actions having occurred and shall result in immediate removal from the work place and termination from employment.
 - A. Employees shall not be impaired by or under the influence of alcohol or controlled substances when reporting to work, while on duty, while operating a City vehicle or personal vehicle while conducting City business.
 - B. Employees shall not possess alcohol or controlled substances while on duty. Possession of controlled substances or alcohol in a City vehicle whether on or off duty is prohibited.
 - C. Employees shall not use controlled substances or consume alcohol on or off the City's premises during the employee's work hours. For the purposes of this policy, work, meal breaks and "on call" assignments are included as work hours.
 - D. Refusal to submit to a reasonable request for drug and/or alcohol testing by a supervisor.
- .09 The following acts are also prohibited and committing any such act subjects the employee to disciplinary action.
 - A. Employees shall not use or possess controlled substances or alcohol outside of work hours on City property.
 - B. Employees shall not consume alcohol or use controlled substances outside of work hours while wearing City of Frisco uniforms.

EMPLOYEE RESPONSIBILITIES:

- 1.9.1.10 It is every employee's responsibility to:
 - A. Report to work during regularly scheduled hours or "on call" not impaired by or under the influence of alcohol or controlled substances.

- B. Not possess or use, or have the odor of alcohol or drugs on his/her breath during working hours, breaks, meal periods, while on City property in an official capacity or while operating any City vehicle.
- C. Report any motor vehicle accident immediately to the supervisor after it has occurred.
- D. Not directly or through a third party sell or provide drugs or alcohol to any person or to any other employee while either employee or both employees are on duty, or "on-call".
- E. Submit immediately to reasonable requests for alcohol and/or drug analysis when requested by a supervisor to include requests defined in section 1.9.1.07 (reasonable suspicion) of this policy.
- F. At the beginning of the work shift, declare to the supervisor the use of any over-the-counter or prescription medication which may interfere with the safe and effective performance of his/her duties or the operation of City equipment.
- G. Provide within twenty-four (24) hours of request by the employer a current, valid prescription for any drug or medication identified when a drug screen/analysis is positive. If the prescription is not in the employee's name, he/she will be subject to disciplinary action.

MANAGER/SUPERVISOR RESPONSIBILITIES:

- 1.9.1.11 Managers and supervisors are responsible for consistent enforcement of this policy. Any supervisor who knowingly permits a violation of this policy by employees under his/her direct supervision shall be subject to disciplinary action including but not limited to termination.
- .12 Managers and supervisors shall request that an employee submit to a drug and/or alcohol analysis when a manager or supervisor has a reasonable suspicion, (see reasonable suspicion definition 1.9.1.07), that an employee is impaired by or under the influence of drugs or alcohol. Managers and supervisors shall also request an employee to submit to a drug test after a motor vehicle accident as defined in section 1.9.1.06.
- .13 When reasonable suspicion exists, managers and supervisors may request, as part of an investigation, that an employee remove any and all controlled substances from his/her being or in his/her possession. If an employee refuses to do so, the employee is refusing to participate in the investigation. Anytime an investigation reaches this stage, both the Department Director and Human Resources Director

or City Manager must be involved. Refusal by an employee to cooperate in an investigation is considered serious misconduct and may subject the employee to immediate termination from employment.

- .14 Managers and supervisors shall not confiscate, without consent, prescription drugs or medications from an employee as long as the prescription is in their name.

DRUG TESTING PROCEDURES:

- 1.9.1.15 **Promotions/Transfers:** Promotions and transfers are not considered pre-employment; therefore, current employees being promoted or transferred will not be drug tested.
- .16 **Pre-Employment:** The City of Frisco requires that every newly hired employee be free of drugs. Drug testing will be limited to finalists upon completion of the employment screening process. Each applicant will be required to sign a **Consent to Drug Test Form** (Attachment A). Each offer of employment shall be contingent upon the passing of a drug test. The City will not hire any applicant who fails to pass or refuses to take a pre-employment drug test.
- .17 **Reasonable Suspicion:** As one means of promoting a drug-free work environment, employees reasonably suspected of being impaired by, or under the influence of alcohol or controlled substances will be required to submit to a chemical analysis of samples of urine and/or blood as a condition of continued employment. A manager or supervisor who suspects that an employee is under the influence of drugs or alcohol, should immediately get another reliable witness (preferably another supervisor) to observe the employee's behavior (see definition of Reasonable Suspicion section 1.9.1.07). If the second witness agrees with the suspicion, the following should occur:
- A. The manager or supervisor will immediately notify the Department Director when reasonable suspicion occurs. The manager or supervisor shall document in writing the facts constituting reasonable suspicion that the employee in question is under the influence of drugs or alcohol. This information shall be stated on the **Reasonable Suspicion Report Form** (Attachment B). Once this form has been completed the Department Director will notify the Director of Human Resources or City Manager for approval to proceed (to section B. below).
- B. The manager or supervisor shall hold a confidential meeting with the employee to discuss the reasonable suspicion and carefully note any explanations offered. Also note any additional things that may confirm the reasonable suspicion.

- C. Managers and supervisors shall also notify the Department Director when they have reasonable suspicion that an employee may have illegal drugs in his or her possession or in an area not jointly or fully controlled by the City. After obtaining the Department Director's approval, managers and supervisors may provide information to the Police Department regarding the possible possession.

NOTE: Skip to section 1.9.1.19 of this directive for continuation of drug testing procedures for reasonable suspicion.

- .18 **After Accidents:** Employees will be required to submit to drug testing after accidents as defined in section 1.9.1.06 of this directive. **Alcohol testing will be required after accidents only if there is reasonable suspicion.** The following after accident procedure should occur:

- A. The supervisor or manager should ensure that the drug test is conducted on the day of the accident or as soon as possible.

Note: Any employee who is unable to work following an accident due to a physical or emotional condition, may be sent home using appropriate leave balances (Compensatory Time or Sick Leave).

- .19 **Continuation of Drug Testing Procedures for Both After Accidents and Reasonable Suspicion:**

- A. Prior to an employee reporting to the medical facility, the supervisor shall call Human Resources for test authorization. The medical facility maintains a list of City personnel who can authorize a drug and/or alcohol test and who can receive test results. The supervisor will also complete a **Drug Testing Notice Form** (Attachment C) indicating the appropriate reason for the test being administered. A copy of this form should be given to the employee and another sent to the Human Resources Department to be placed in the employee's file.
- B. If the need for a test occurs after the Human Resources Department's hours of operation, the supervisor should call the Director of Human Resources, the City Manager or City Secretary at their home telephone or pager numbers for test authorization.
- C. If the need for a test occurs after the medical facility's hours of operation, the employee should be given written notice to report to work the **next day** when he/she will be instructed to go to the medical facility for a drug test. The notice should include ordering him/her not to take or use any substance that might affect the test. This notice will be given when the supervisor

utilizes the Drug Testing Notice Form (Attachment C). The employee must report to work whether or not he/she is scheduled. A copy of the executed notice should be sent to the Human Resources Department to be placed in the employee's personnel file.

- D. Any manager or supervisor requiring an employee to submit to a drug and/or alcohol analysis shall be responsible for the employee's transport to the City's designated physician if there is any additional evidence, beyond the accident, that the employee is currently under the influence. If reasonable suspicion is the reason for the test a supervisor or designee must transport the employee to the medical facility.
- E. Any manager or supervisor encountering an employee who refuses to submit to a drug and/or alcohol analysis upon request shall remind the employee that refusal to take the test will be considered insubordination/"serious misconduct" and will result in termination from employment. Then the supervisor should order the employee to take the test. If the employee still refuses, the supervisor should complete a Refusal to Provide Specimen Form (Attachment D). The supervisor should notify the Director of Human Resources or City Manager then proceed with the termination process giving notice of termination in writing.
- F. After the drug/alcohol test, if the supervisor observes that the employee appears to be "under the influence", a family member of the employee should be contacted to take the employee home or the supervisor should make arrangements for the employee to be taken home. Appropriate leave balances, (Compensatory Time and/or Vacation Leave), should be used to account for time away from work. The employee should be instructed to report to the supervisor's office the next morning for the supervisor to determine if he/she is in a condition capable of doing work.
- G. Tampering with a Test: Tampering with a urine or blood specimen in an attempt to influence test results will result in immediate termination from employment.

MEDICAL EXCEPTIONS:

- 1.9.1.20 Exceptions to this policy shall be made for employees who are reasonably suspected of being under the influence and impaired by medication taken according to a prescription in the employee's name obtained from a licensed physician for medical purposes. Such individuals may be placed in an assignment consistent with their ability to perform the assigned task, or will be removed from the work place and be allowed to use their accumulated sick leave until they are able to return to work.

CONTINUOUS CALL-BACK EMPLOYEES:

- 1.9.1.21 Employees subject to continuous emergency call back are required to declare to their supervisors at the time they are called in the use of alcohol or controlled substances, including prescribed or over-the-counter medications, that might affect their ability to perform under the emergency. The supervisor shall determine if the employee is fit to work and in what capacity. However, if an accident occurs the employee will be tested. If the test indicates they were under the influence or impaired by a controlled substance or alcohol termination will occur.

SOCIAL FUNCTIONS:

- 1.9.1.22 Employees attending training and conferences may participate in social functions associated with the conference. This includes the consumption of alcohol, so long as the employee's conduct does not reflect adversely upon the City. Employees who consume alcohol at these functions are encouraged not to drive; they shall not operate a city owned or rented vehicle.

RECREATION AREAS:

- 1.9.1.23 The use or possession of alcohol outside of work hours at City recreation facilities is regulated by City Ordinance and policies.

CONFIDENTIALITY/DOCUMENTATION:

- 1.9.1.24 Laboratory reports or test results shall be maintained in the Human Resources Department in a confidential medical file separate from the employees' official personnel file. The reports or test results may be disclosed to City management on a strictly need-to-know basis and to the tested employee/applicant upon request. Disclosures, without patient consent, may also occur when:
- A. the information is compelled by law or by judicial or administrative process;
 - B. the information has been placed at issue in a formal dispute between the employer and employee;
 - C. the information is to be used in administering an employee benefit plan;
 - D. the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.

SEVERABILITY:

- 1.9.1.25 The provisions of this policy are severable and if any of its provisions shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

BAR FROM EMPLOYMENT:

- 1.9.1.26 An applicant or employee who violates this policy or any other City policy or resigns in lieu of separation from employment due to a policy violation will be barred from employment with the City for a period of six months.

- Attachments: A - Consent to Drug Test
 B - Reasonable Suspicion Report Form
 C - Drug Testing Notice Form
 D- Refusal to Provide a Specimen Form
 E - Supervisor Implementation Checklist
 F - Listing of Area Substance Abuse Professionals (SAPs)
 G - Non-D.O.T. Drug and Alcohol Testing Directive Acknowledgement and Consent Form